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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

ODILON ARZADON, Plaintiff and Appellant, v. JOHANNA WHITE, Defendant and Respondent.	H041567 (Monterey County Super. Ct. No. M125519)

Plaintiff Odilon Arzadon sued his former landlord, defendant Johanna White, charging that she unlawfully retained a security deposit and prevented him from taking certain property that he claimed was his. After a trial, the superior court entered judgment for defendant. Plaintiff appeals, but he points to no claimed error by the trial court, seeking instead to reargue the facts. This court is not empowered to retry the facts, and even if it were, the present record—which does not include a reporter's transcript—is insufficient to permit such a retrial. Therefore, we must affirm the judgment.

BACKGROUND

It appears to be undisputed that in mid-2007 plaintiff purchased a bar business from its previous owner. At the same time he entered into a lease of the underlying premises from White, as trustee of a trust that owned the property. He operated the business until October 2013 when, after repeated failures to pay rent, White terminated

the tenancy. Plaintiff sought to remove certain fixtures from the premises, including a bar and a kitchen fire-suppression system, but was prevented from doing so by Carmel police. He then brought two small claims actions and a superior court action against White, seeking essentially to recover the fixtures and the security deposit he had given to White when he entered the lease. These matters were consolidated. After a nonjury trial, the court rejected plaintiff's claims and sustained a cross-complaint by White, awarding her something over $7,000, reflecting the damages found less the security deposit. Judgment was entered accordingly. Plaintiff filed a premature notice of appeal. We exercise our discretionary power to deem the notice filed immediately after entry of judgment. (Cal. Rules of Court, rule 8.104(d)(2).)

DISCUSSION

I. Deficiencies in Brief

Appellate review is predicated on the commission, or asserted commission, of *error* by the trial court. Plaintiff's brief makes no attempt to identify specific errors of law occurring below. His entire appeal is thus misconceived. " 'It is the office of a brief attacking a decision to point out the errors complained of, as shown in the record, to state the points on appeal separately under appropriate headings, to give arguments and authorities in support of the points made, and to show that the errors resulted in prejudice to the substantial rights of the appellant. . . . [T]he appellate court cannot be expected to search the record or prosecute an independent inquiry for errors on which the appellant may be relying. . . . Not only must the appellant raise the point in his brief, but he must point out the error specifically, showing exactly wherein the lower court's action is deemed erroneous.' " (*Kelley v. Bailey* (1961) 189 Cal.App.2d 728, 731.) "An appellate court is not required to examine undeveloped claims, nor to make arguments for parties." (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106.)

Rather than identify errors, the brief consists almost entirely of a recitation of supposed facts that plaintiff believes supported or required a judgment in his favor. But this court "is not a second trier of fact . . . . We are bound to uphold the challenged order, particularly if supported by findings of fact, if it is supported by substantial evidence." (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.) In the absence of procedural or evidentiary error—neither of which is suggested by plaintiff—the only way to successfully challenge a trial court's findings of fact on appeal is to demonstrate that they are unsupported by substantial evidence. Plaintiff's brief on its face is insufficient to make such a showing. " ' "The rule is well established that a reviewing court must presume that the record contains evidence to support every finding of fact, and an appellant who contends that some particular finding is not supported is required to set forth in his brief a summary of the material evidence upon that issue. Unless this is done, the error assigned is deemed to be waived. [Citation.] It is incumbent upon appellants to state fully, with transcript references, the evidence which is claimed to be insufficient to support the findings." ' [Citations.]" (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 737, quoting *In re Marriage of Fink* (1979) 25 Cal.3d 877, 887.) " ' "The reviewing court is not called upon to make an independent search of the record where this rule is ignored." [Citations.] "A claim of insufficiency of the evidence to justify findings, consisting of mere assertion without a fair statement of the evidence, is entitled to no consideration, when it is apparent, as it is here, that a substantial amount of evidence was received on behalf of the respondents." ' " (*Du Zeff's Hollywood, Inc. v. Wald* (1965) 235 Cal.App.2d 678, 683.)

Even if plaintiff attempted to make the requisite showing for a claimed insufficiency of evidence, the challenge would be defeated by the absence of a reporter's transcript. "Where no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed*

correct as to *all evidentiary matters*. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. [Citation.] The effect of this rule is that an appellant who attacks a judgment but supplies no reporter's transcript will be precluded from raising an argument as to the sufficiency of the evidence. [Citations.]" (*In re Estate of Fain* (1999) 75 Cal.App.4th 973, 992.)

Nor does plaintiff's brief make a sufficient presentation of pertinent *legal* principles. It contains some passing citations to legal authority, but fails to explain how the trial court erred in applying any legal rule or doctrine. "An appellate brief 'should contain a *legal argument* with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.' " (*In re Marriage of Schroeder* (1987) 192 Cal.App.3d 1154, 1164, quoting 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 479, p. 469, italics added; see *Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1488, fn. 3, quoting *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700 [" 'When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary.' "].)

II. Non-Return of Security Deposit

Plaintiff repeatedly suggests that defendant wrongfully failed to return plaintiff's security deposit "plus 6 years accrued interest." The gist of the claim, apparently, is that he demanded return of the deposit by letter on November 9, 2013; that defendant had 21 days to respond under "California Tenant Law"; that defendant failed to respond; and that she thereby forfeited the deposit.

The weakness in this argument is that, as has been repeatedly pointed out to plaintiff, his legal premise is simply incorrect; nothing required defendant to respond to his demand within 21 days. For his contrary position he originally cited Civil Code section 1950.5, subdivision (g)(1), which indeed contains such a requirement. But that

statute applies only to "security for a rental agreement for *residential property* that is used as the *dwelling* of the tenant." (Civ. Code, § 1950.5, subd. (a); see *id*., § 1950.7, subd. (a).) On appeal plaintiff no longer cites that statute, citing instead a section dealing with security deposits for commercial leaseholds. (Civ. Code, § 1950.7.) But that statute contains no comparable requirement. Nor does any other provision of "California Tenant Law," at least so far as commercial tenancies are concerned.

As for defendant's actual retention of the deposit, the court found that plaintiff owed $13,000 in unpaid rent plus $3,056.00 in expenditures to restore the premises to a tenantable condition. The court also found that these were expenses to which, under the lease, defendant was entitled to apply the deposit. Since the deposit came to only $11,900, the court quite property concluded that plaintiff was not entitled to any part of it. Needless to say, his claim for interest failed along with the obligation on which it rested.

III. Retrieval of Personal Property

Plaintiff also insists that he was wrongfully prevented from removing certain "personal belongings" from the premises. His brief does not readily disclose what property he is talking about, since he intermingles discussion of this point with discussion of the trade fixtures (see discussion following). However the trial court addressed this claim as follows: "The testimony and evidence show that Arzadon was given an opportunity to and did remove his personal property from the premises. Arzadon was given that chance when he was served with a writ of possession pursuant to Code of Civil Procedure § 715.010. Except for fixtures and equipment attached to the bar—which he claims as personal property—the evidence and testimony show that he was allowed, and did, in fact, remove personal property from the premises." (Fn. omitted.) Plaintiff offers no coherent challenge to this treatment of the issue.

IV. Trade Fixtures

Plaintiff complains that he was not permitted to remove certain "trade fixtures" from the premises. The basic rule is that "[w]hen a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as otherwise provided in this chapter, belongs to the owner of the land, unless he chooses to require the former to remove it or the former elects to exercise the right of removal provided for in Section 1013.5 of this chapter."[1] (Civ. Code, § 1013.) Plaintiff invokes an exception to the general rule as set forth in Civil Code section 1019: "A tenant may remove from the demised premises, *any time during the continuance of his term*, anything affixed thereto for purposes of trade, manufacture, ornament, or domestic use, *if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises*."

The trial court ruled that "the fixtures affixed to the Bar are the property of the landlord . . . under Civil Code §§1013 and 1019 because (1) there is no agreement permitting the tenant . . . to remove the fixtures at the end of the lease; (2) the Bar and its equipment are affixed to the building and cannot be severed without causing substantial damage to the property; and, (3) the commercial lease agreement . . . expressly provides that in the event that Arzadon be 'dispossessed' of the premises, any property left on the premises is deemed abandoned." (Fn. omitted.) Again plaintiff fails to mount a coherent challenge to any of these grounds, although he would have to overcome all three in order to prevail. He would also have to overcome authorities cited by defendant holding that the right of removal pursuant to Civil Code section 1019 can only be exercised "during the continuance of [the lease] term," and thus was unavailable to plaintiff once his

[1] The cross-referenced section authorizes the installer of a fixture to remove it, upon payment of damages to the landowner, if it was installed under a good faith mistake. (Civ. Code, § 1013.5.)

tenancy was terminated, which here occurred no later than October 10, 2013, when by plaintiff's own admission he vacated the premises.[2] (See *Societa Italiana Di Mutua Benejicenza v. Burr* (9th Cir. 1934) 71 F.2d 496; *Rinaldi v. Goller* (1957) 48 Cal.2d 276; *Merrit & Bourne v. Judd & Byrne* (1859) 14 Cal 59.)

Plaintiff devotes considerable ink to the supposed facts surrounding his failed attempts to remove the disputed items. But those facts are irrelevant unless he was legally entitled to take them.

We conclude that plaintiff has presented no colorable claim of error, reversible or otherwise, with regard to any of the matters complained of.

DISPOSITION

The judgment is affirmed.

[2] October 10 is also the date on which the sheriff executed a writ of possession. The writ had been posted on the premises on October 4. ~(Supp. CT 52)~ We need not determine which of these events, or other even earlier events, effected the termination of plaintiff's tenancy for purposes of the cited rule.

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RUSHING, P.J.

WE CONCUR:

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PREMO, J.

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GROVER, J.